

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PUERTO RICO

HILDA L. SOLIS, Secretary of Labor, :
United States Department of Labor, :
 : Civil Action File No.
Plaintiff, :
 : COMPLAINT
v. :
 :
JOSE V. FABRE LABOY d/b/a BANANERA :
FABRE; and JOSE V. FABRE SANTIAGO d/b/a :
FINCA LA PLATA, :
Defendants. :

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor, brings this action under Sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. § 201, et seq.), (“the Act”), alleging that defendants violated sections 6, and 15(a)(2) of the Act.

I.

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act and 28 U.S.C. Sections 1331 and 1345.

II.

Defendant JOSE V. FABRE LABOY d/b/a BANANERA FABRE who does business at Road 117 Km 12.2, Rayo Plata Ward, Sabana Grande, Puerto Rico 00637, within the jurisdiction and venue of this court, is engaged in the business of planting, cultivating, and packing bananas as well as pumpkins, tomatoes and other produce.

III.

Defendant JOSE V. FABRE SANTIAGO d/b/a FINCA LA PLATA who does business at Road 117 Km 12.2, Rayo Plata Ward, Sabana Grande, Puerto Rico 00637, within the jurisdiction and venue of this court, is engaged in the business of planting, cultivating, and packing bananas, watermelon, tomatoes, pineapples, pumpkins and other produce.

IV.

Defendant JOSE V. FABRE LABOY d/b/a BANANERA FABRE, a sole proprietorship, has regulated the employment of all persons he has employed, has the power to hire and fire employees and otherwise has acted directly and indirectly in the businesses' interests in relation to the employees, and is thus an employer of employees within the meaning of section 3(d) of the Act.

V.

Defendant JOSE V. FABRE SANTIAGO d/b/a FINCA LA PLATA , a sole proprietorship, has regulated the employment of all persons he has employed, has the power to hire and fire employees and otherwise has acted directly and indirectly in the businesses' interests in relation to the employees, and is thus an employer of employees within the meaning of section 3(d) of the Act.

VI.

The business activities of the defendants, as described herein, are related and performed through common control for a common business purpose and constitute an enterprise within the meaning of section 3(r) of the Act.

VII.

Defendants are engaged in cultivating and packing bananas, vegetables and other fruits for wholesale. Defendants' farms have the same entrance, operated in the same contiguous space and their packing sheds are located adjacent to one another. Defendants have shared operations. For example, vegetables grown by each business are packed at the FINCA LA PLATA packing shed. FINCA LA PLATA has packed its fruit in boxes bearing the BANANERA FABRE label.

VIII.

During the relevant time period at least through February 2012, defendants have used the same person to perform bookkeeping, payroll, and timekeeping functions for each of the businesses. Defendants have used the same time clock for each of the businesses' employees to record their hours.

IX.

Defendant FABRE SANTIAGO manages the BANANERA FABRE business and has the power to hire, fire and supervise its employees. Employees of each defendant have sometimes done work for the other defendant.

X.

Defendants have employed and are employing employees listed in Exhibit A in workweeks at their place of business engaged in commerce or in the production of goods for commerce.

XI.

Defendants have employed and are employing employees at their place of business in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. These goods include but are not limited to pesticides, office supplies and packing materials. The enterprise has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, the employees are employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act.

XII.

Defendants have willfully and repeatedly violated and are violating the provisions of Sections 6 and 15(a)(2) of the Act, by paying many of their employees employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at rates less than the applicable statutory minimum rate prescribed in Section 6 of the Act, typically \$6.25 or \$6.50 per hour. Thus, defendants are liable for unpaid minimum wage compensation owing to their employees under section 6 of the Act and an additional equal amount as liquidated damages pursuant to section 16(c) of the Act, or in the event liquidated damages are not awarded, minimum wage compensation and prejudgment interest on said minimum wage compensation under section 17 of the Act.

XIII.

Defendants willfully and repeatedly have violated the provisions of the Act as alleged above since at least September 18, 2009.

XIV.

Defendants' violations as described above are willful. For example, JOSE V. FABRE LABOY d/b/a BANANERA FABRE has been the subject of at least two (2) prior investigations by the Wage and Hour Division of the U.S. Department of Labor and has been informed of the requirements of the Act.

WHEREFORE, cause having been shown, plaintiff prays for judgment against defendants providing the following relief:

(1) For an injunction issued pursuant to section 17 of the Act permanently restraining defendants, their agents, servants, employees, and those persons in active concert or participation with defendant, from violating the provisions of sections 6 and 15(a)(2) of the Act; and

(2) For an order pursuant to section 16(c), of the Act finding defendants liable for unpaid minimum wages found due defendants' employees listed on the attached Exhibit A and an equal amount of liquidated damages (additional unpaid minimum wages and liquidated damages may be owed to certain employees presently unknown to plaintiff for the period covered by this Complaint); or,


(3) In the event liquidated damages are not awarded, for an injunction issued pursuant to section 17 of the Act restraining defendants, their agents, servants, employees, and those persons in active concert or participation with defendants, from withholding the amount of unpaid minimum

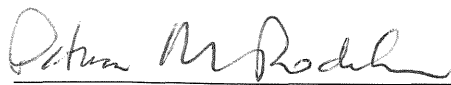
wages found due defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. §6621; and


(4) For an order awarding plaintiff the cost of this action; and

(5) For an order granting such other and further relief as may be necessary and appropriate.

DATED: September 18, 2012
New York, New York


M. PATRICIA SMITH
Solicitor of Labor


PATRICIA M. RODENHAUSEN


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EXHIBIT A

Bananera Fabre Employees

Melvin Acosta Vargas
Eliezer Albino Medina
Maricely Albino Medina
Juan Alvarez Vazquez
Luis A. Andujar Vazquez
Luis A. Ayala Belen
Miguel J. Ayala Lopez
Norberto Baez Comier
Neftali Baez Rodriguez
Maximino Banchs Figueroa
Emmanuel Banchs Lopez
Maximino Banchs Lopez
Elibet Berrocales Vega
Dersantile Boulet
Janichia Burgos Quiñones
Efrain Cabot Velez
Ramon L. Caraballo Torres
Johanna Castellar Muñiz
Jan Jose Castro Montalvo
Jose H. Cedeno Cornier
Daniel Cedeño Quiñones
Jose D. Cintron Torres
Kenneth L. Clausell Banchs
Gared Collado Mercado
Hiram D. Comas Berrocales
Adalberto Correa Rivera
Walter Cruz Aviles
Axel M. Cruz Cora
Wilson Cruz Santos
Jossian Delgado Rivera
Leonides Figueroa Cruz
Kenny D. Figueroa Santos
Rennie P. Flores Gonzalez
Josue Galarza Galarza

Walter Galarza Ruiz
Samuel Gil Albino
Sergio L. Gonzalez Berrocales
Julio V. Gonzalez Garcia
Robert Gonzalez Milan
Eduardo Irizarry Figueroa
Elena E. Lojo Gonzalez
Santos L. Lopez Alameda
Victor D. Lugo Colon
Michael D. Lugo Gonzalez
Michael Lugo Vega
Nicasio Martinez Mendoza
Arturo Martinez Morales
Carmelo Martinez Morales
Cruz Martinez Morales
Luis A. Martinez Ortiz
Erick Martinez Santana
Santos Medina Morales
Cristina L. Mercado Gonzalez
Eusebio Mercado Nazario
Carlos M. Mercado Ortiz
Francheska Mercado Torres
Dimitre Mercado Velez
Angela F. Montalvo Torres
Carlos A. Montalvo Vega
Francisco Morales Rodriguez
Robil O. Munoz Antommarchi
Jesus M. Negrón Caraballo
Jabiel Negrón Santiago
Dennis Nieves Ortiz
Alan Orengo Baez
Noemi Ortiz Cruz
Edgar Ortiz Quiñones
Jose L. Ortiz Santiago
Javier Ortiz Vazquez
Angel J. Pacheco Cruz
Ana L. Pacheco Nazario
Angel J. Pacheco Ruiz

Jacqueline Padilla Cruz
Carlos M. Pantoja Rodriguez
Luis A. Pares Ocasio
Freddie A. Peña Rodriguez
Dahiana D. Perez Lebron
Modesto Perez Roman
Jayson O. Quiñones Ortiz
Omar J. Quinones Ortiz
Carolina Ramirez Zambrana
Joanice J. Ramos Ramirez
Darwin Ramos Silva
Dennis Ramos Vargas
Ramon Ramos Velez
Nelson L. Rios Chacon
Reymin Rodriguez Alvarez
Jose L. Rodriguez Camacho
Luis M. Rodriguez Camacho
Junmayra Rodriguez Cedeño
Luis A. Rodriguez Cornier
Cesar Rodriguez Gonzalez
Christian Rodriguez Martinez
Amaldo Rodriguez Millan
Julio E. Rodriguez Nazario
Steven Rodriguez Nazario
Ronald Rodriguez Pacheco
Julio Rodriguez Riopedre
Rogelio Rodriguez Rodriguez
Elmer Rodriguez Torres
Cesar Roman Gonzalez
Cesar Roman Rodriguez
Jensen Rosario Santiago
Jose L. Ruiz Ortiz
Angel G. Ruiz Rios
Griselle M. Ruiz Rosado
Erick A. Santiago Bonilla
Luis Santiago Quiñones
Belma Santiago Santiago
Zulma Santos Vazquez

Carlos M. Soto Ortiz
Leslie Soto Pacheco
Luis E. Surita Diodonet
Edison Tardi Muñiz
Frankie Torres Maldonado
Yamilett Torres Vargas
Angel L. Valentin Rodriguez
Pablo Vargas Acosta
Luis I. Vargas Forrodona
Roberto Vargas Forrodona
Ervin L. Vargas Garcia
Luis J. Vargas Ramos
Michael Vazquez Arroyo
Jose L. Vazquez Medina
Jose L. Vazquez Morales
Edwin O. Vazquez Rodriguez
Ignacio Vazquez Velez
Mabel Vega Almodovar
Encarnacion Vega Ruiz
Luis M. Velez Berrios
Kenneth A. Yelton Torres

Finca La Plata Employees

Nelson Andino Ocasio
Luis A. Andujar Vazquez
Darwin Berrocales Rivera
Modesto Canabal Enriquez
Eddie J. Canabal Mendez
Nelson Cordero Vega
Miguel A. Cruz Cruz
Luis A. Diaz Dominicci
Jorge L. Feliciano Santana
Rennie P. Flores Gonzalez
Pablo D. Garica Santiago
Axl Gonzalez
Jonathan Gonzalez Millan
Omar Gonzalez Millan
Eduardo Irizarry Figueroa
Juan C. Lugo Ojeda

Juan A. Lugo Pino
Carmelo Martinez Morales
Robinson D. Matos Martinez
Santos Medina Morales
Dimitre Mercado Velez
Lizette Muriel Caraballo
Osvaldo Nazario Vega
Iris I. Ocasio Rodriguez
Steven Ocasio Rodriguez
Edgar Ortiz Quiñones
Dariel Ortiz Ramos
Luis A. Pares Ocasio
Carmen L. Pellicier Velez
Dahiana D. Perez Lebron
Emmanuel Perez Mattei
Angel L. Perez Padilla
Isaac Polanco Montalvo
Nelson L. Rios Chacon
Ivette Rivera Torres
Ivan Rodriguez Camacho
Jesus G. Rodriguez Camacho
Ricardo Rodriguez Cruz
Hiram Rodriguez Gomez
Walter Rodriguez Orengo
Edison Rodriguez Pacheco
Jose A. Rodriguez Rodriguez
Alberto U. Rodriguez Saez
Victor M. Ruiz Mojica
Carlos I. Ruiz Perez
Jonathan D. Sanchez Vega
Ezequiel Santana Torres
Erick A. Santiago Bonilla
Belma Santiago Santiago
Jose A. Sepulveda Rodriguez
Edison Tardi Muñiz
Roberto Tirado Mercado
Darwin Torres Castro
Angel L. Valentin Rodriguez
Luis J. Vargas Ramos
Jose L. Vazquez Morales
Eric E. Vega Maldonado
Aladino Vega Sanchez
Luis A. Zapata Aviles